



Appeal of Ronald T. Doak

Two questions are presented for decision: (1) whether respondent's notice of proposed assessment for the year 1978 was barred by the statute of limitations; and (2) if not, whether the amount of such additional tax due was correctly computed by respondent.

Appellant filed his California personal income tax return for 1978 on or about April 15, 1979. Thereafter, the Internal Revenue Service audited appellant's 1978 federal income tax return and made certain adjustments which increased his taxable income by \$6,776. Respondent received a copy of the federal audit report dated August 14, 1981, and determined that the adjustments were applicable to appellant's California personal income tax return for the same year. Accordingly, respondent issued a notice of proposed assessment reflecting such determination on January 22, 1982. Appellant protested and respondent's denial of that protest led to this appeal.

Appellant has produced no evidence to show that the federal audit was erroneous. Instead, appellant first argues that the subject assessment was barred by the statute of limitations. Appellant also contends that respondent's computation of the amount of additional tax due was in error. Appellant's arguments are without merit.

The basic statute of limitations for personal income tax deficiency assessments is contained in section 18586 of the Revenue and Taxation Code, which provides:

Except in case of a fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise fixed.

As indicated above, appellant filed his 1978 return on or about April 15, 1979, and the notice of proposed assessment was mailed on January 22, 1982, clearly within the four-year period provided by section 18586. It should be noted that the four-year statute of limitations contained in section 18586 of the Revenue and Taxation Code differs from the three-year statute of limitations contained in

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section 6501(a) of the Internal Revenue Code. Accordingly, we conclude that the assessment was not barred by the statute of limitations.

Next, **appellant** argues that since the amount of California income tax withheld from him in 1978 totaled \$319, that amount, and not \$142, **should** be deducted from his 1978 total tax liability. However, his 1978 California return indicates that, initially, appellant received a refund of \$177 from the tax withheld in 1978. Thus, his 1978 return indicates that he paid \$142 of tax in 1978 (\$319 less **\$177**), not \$319, as alleged. Therefore, respondent correctly credited \$142 as the previously assessed amount in its notice of proposed assessment.

Lastly, we note that a determination by respondent which is based upon a federal audit is presumed correct. (Appeal of Herman D. and Russell Mae Jones, Cal. St. Bd. of Equal., April 10, 1979.) The taxpayer must either **concede** that the federal audit report is **correct** or bear the burden of proving that it is incorrect. (Rev. & Tax. Code, § 18451.) As indicated above, appellant has produced no evidence to show that the federal audit is erroneous.

For the reasons set forth above, respondent's action must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ronald T. Doak against a proposed assessment of additional personal income tax in the amount of \$388.14 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of September, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins ; Member

Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9